

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HASIM A. MOHAMMED, an individual,

Plaintiff,

No. C 19-01946 WHA

v.

AMERICAN AIRLINES, INC., a Delaware  
corporation, RENEE MAXWELL,  
and DOES 1 through 50, inclusive,

Defendants.

**ORDER DENYING MOTION  
TO REMAND AND ORDER  
DISMISSING RENEE  
MAXWELL**

**INTRODUCTION**

In this employment action, a former employee sues for race discrimination against an airline and supervisor. The airline defendant removed the action on the basis of diversity jurisdiction, claiming fraudulent joinder of the supervisor. Plaintiff now seeks to remand the action to state court. For the reasons stated below, plaintiff's motion to remand is **DENIED**.

**STATEMENT**

The following allegations are taken from the complaint. Plaintiff Hasim Mohammed, a resident of California, worked for defendant American Airlines, Inc., from January 2000 until his termination in February 2018. He worked as a fleet services agent. He had no significant issues with his employment until defendant Renee Maxwell became his supervisor in 2017. Plaintiff was of Indian descent but from outward appearances came across as Middle Eastern. Maxwell allegedly made constant comments about his long beard, saying "he did not represent

1 American Airlines’ values” (Compl. ¶ 13). On other occasions, Maxwell told him that he could  
2 not participate in carrying a casket or approach the family of the military deceased, implying  
3 that he looked like the enemies that had killed the deceased. Maxwell told him he could not go  
4 near boarding gates because it would frighten passengers. Plaintiff complained to human  
5 resources about Maxwell’s behavior toward him but nothing was done about it. Plaintiff alleges  
6 he was ultimately “terminated on the pre-text that he violated company policy when he was  
7 accused of pushing a co-worker away from him when that person got too close to him” (Compl.  
8 ¶¶ 9–16).

9 Plaintiff commenced this action in the Superior Court for the County of Santa Clara in  
10 February 2019, naming American, a citizen of Delaware and Texas, and Maxwell, a citizen of  
11 California, as defendants. Plaintiff asserts the following claims against both defendants:  
12 (1) race discrimination pursuant to California Government Code Section 12940(a); (2) failure to  
13 take reasonable steps to prevent discrimination pursuant to California Government Code  
14 Section 12940(k); (3) retaliation pursuant to California Government Code Section 12940(h);  
15 (4) wrongful termination; (5) intentional infliction of emotional distress; and (6) unfair business  
16 practices pursuant to California Business and Professions Code Sections 17200–208 (Compl.  
17 ¶¶ 17–46). American answered and then removed, arguing that Maxwell, the only California  
18 defendant, had been fraudulently joined (Notice ¶¶ 1–17, Exh. B at 3). Maxwell has never been  
19 served. Plaintiff now moves to remand the action and seeks attorney’s fees and costs incurred  
20 as a result of bringing this motion (Br. 2–3). Plaintiff dedicates the majority of his brief to  
21 arguing that he has stated a valid claim against Maxwell for intentional infliction of emotional  
22 distress (*id.* at 5–7). As to the other claims, plaintiff provides general statements that he has  
23 provided enough to survive the fraudulent-joinder test (*id.* at 2, 7). American’s opposition  
24 primarily addresses plaintiff’s arguments regarding Maxwell’s liability for intentional infliction  
25 of emotional distress (Opp. 3–6). The central issue at play in the instant motion is whether  
26 plaintiff has stated enough of a claim against Maxwell to defeat complete diversity and removal  
27 jurisdiction. This order follows full briefing and oral argument.  
28

ANALYSIS

American contends that Maxwell was joined as a sham defendant in order to destroy diversity, and that, once Maxwell is dismissed, complete diversity sustains removal (Notice ¶ 5–8, 17). For the reasons set forth below, this order finds that there is no possibility state law will impose liability against Maxwell on any of plaintiff’s claims. Accordingly, Maxwell is dismissed and the motion to remand is **DENIED**.

**1. SUPERVISORS CANNOT BE SUED INDIVIDUALLY  
UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT  
OR FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.**

Plaintiff contends American and Maxwell are liable for race discrimination, failure to take reasonable steps to prevent discrimination, and retaliation under the California Fair Employment and Housing Act (“FEHA”) and California Government Code Sections 12940(a), 12940(k) and 12940(h) (Compl. ¶¶ 17–31). American argues plaintiff cannot possibly raise these three claims because supervisors may not be sued individually under the FEHA (Notice ¶¶ 11–13). In support of this assertion, American cites *Reno v. Baird*, 18 Cal. 4th 640, 663 (1998), where the California Supreme Court held that individual supervisors “may not be sued under FEHA for allegedly discriminatory acts.” Plaintiff does not provide any authority to rebut this argument, but rather provides general statements that he has provided enough to survive the fraudulent joinder test (Br. 2, 7). To prove fraudulent joinder, a defendant must show that “the plaintiff fail[ed] to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.” *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (citation omitted). American has established that plaintiff cannot support a claim against an individual supervisor under FEHA.

As to plaintiff’s fourth claim, he contends that American and Maxwell are liable for wrongful termination in violation of public policy pursuant to California Civil Code Section 3294 (Compl. ¶¶ 32–37). American again cites *Reno*, 18 Cal. 4th at 663, which held that individual supervisors may not be held individually liable under this section as well. This order finds this law clearly established. Thus, American has met its burden by showing that plaintiff cannot state this claim against Maxwell.

1           **2. NO LEGAL BASIS FOR INTENTIONAL INFLICTION**  
2           **OF EMOTIONAL DISTRESS CLAIM.**

3           Plaintiff alleges that both American and Maxwell are liable for intentional infliction of  
4 emotional distress (Compl. ¶¶ 38–41). American argues that Maxwell cannot be held liable  
5 because plaintiff did not and cannot plead facts that support the outrageous conduct required for  
6 a cognizable intentional infliction of emotional distress claim (Notice ¶ 15; Opp. 1). Under  
7 California law, the elements of a claim for intentional infliction of emotional distress are as  
8 follows: “(1) extreme and outrageous conduct by the defendant with the intention of causing, or  
9 reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering  
10 severe or extreme emotional distress; and (3) actual and proximate causation of the emotional  
11 distress by the defendant’s outrageous conduct.” *Lawler v. Montblanc North America, LLC*,  
12 704 F.3d 1235, 1245 (9th Cir. 2013) (quoting *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009)).  
13 “A defendant’s conduct is ‘outrageous’ when it is so ‘extreme as to exceed all bounds of that  
14 usually tolerated in a civilized community.’” *Ibid*.

15           American contends that plaintiff’s allegations fail to show that Maxwell’s conduct was  
16 outrageous, which is a necessary element of the claim. Specifically, it argues that plaintiff’s  
17 allegations that Maxwell made comments about his beard, requested that he not carry a casket,  
18 and instructed him to avoid the boarding area are insufficient to establish outrageous conduct  
19 (Opp. 3–5).

20           American primarily relies on *Janken v. GM Hughes Electronics*, 46 Cal. App. 4th 55,  
21 65, 80 (1996), where a California Court of Appeal held that conduct falling within the normal  
22 scope of employment, even if later found to be discriminatory, cannot amount to outrageous  
23 conduct sufficient to bring an intentional infliction of emotional distress claim. In *Janken*, four  
24 plaintiff employees brought, *inter alia*, intentional infliction of emotional distress claims against  
25 the defendant aircraft company and three individual supervisor defendants for their alleged  
26 termination based on age. *Id.* at 61. The California Court of Appeal drew the distinction  
27 between discrimination and harassment within the meaning of the FEHA and held the same  
28 reasoning applied to claims for intentional infliction of emotional distress. *Id.* at 64–65, 80.  
It held that complaints regarding normal management conduct, even if later found to be

1 discriminatory, are properly brought against the employer, not the supervisor, under the FEHA.  
2 *Ibid.* “Harassment, by contrast, consists of actions outside the scope of job duties which are not  
3 of a type necessary to business and personnel management.” *Id.* at 65. The California Court of  
4 Appeal upheld the dismissal of the plaintiff’s intentional infliction of emotional distress claim,  
5 holding that the alleged conduct amounted to personnel management actions only, not  
6 harassment. *Id.* at 79–80.

7 American argues that plaintiff pleads only personnel management actions that, even if  
8 later are found to be discriminatory, are insufficient to support a claim for intentional infliction  
9 of emotional distress against the supervisor (Notice ¶ 15). This order agrees. “If personnel  
10 management decisions are improperly motivated, the remedy is a suit against the employer  
11 for discrimination.” *Janken*, 46 Cal. App. 4th at 80. Here, plaintiff alleges that he suffers from  
12 severe humiliation on account of Maxwell’s comments about his appearance and his restriction  
13 from performing work functions on the implication that his appearance resembled the enemies  
14 that caused the death of a service member (Compl. ¶¶ 12–15, 40). Maxwell’s comments about  
15 plaintiff’s beard conflicting with “American Airlines’ values” is clearly a management decision  
16 made on behalf of American. While this order notes that plaintiff understandably felt that  
17 Maxwell’s restriction from plaintiff carrying a military casket was discriminatory, such a claim  
18 would be against American. The potentially discriminatory nature of these allegations does not  
19 change the fact that Maxwell’s solicitude for the families of deceased soldiers was a  
20 management decision on behalf of American.

21 Similarly, the instruction to avoid the boarding gates was a management decision on  
22 behalf of American. Although plaintiff may rightfully feel these actions were discriminatory,  
23 the management instructions were clearly given on behalf of American, evidently in misguided  
24 solicitude for the passengers’ sense of safety. Since only actions outside the scope of  
25 employment can rise to the level of harassment, and since Maxwell’s instructions were clearly  
26 within the scope of employment, plaintiff’s allegations cannot possibly rise to the level of  
27 harassment. *Janken*, 46 Cal. App. 4th at 64–65, 80. Therefore, the action is properly brought  
28 against American, not Maxwell. *See id.* at 80.

1 In his reply, plaintiff cites several district court decisions in support of his argument that  
2 the standard on a motion to remand is lower than the standard on a motion to dismiss (Reply  
3 2–5). Nevertheless, this order finds that the allegations in question do not meet the lower  
4 standard for remand. For example, in *Ybarra v. Universal City Studios, LLC*, No. 13-cv-4976,  
5 2013 WL 5522009, at \*4 (C.D. Cal. Oct. 2, 2013), Judge Philip Gutierrez stated that a “mere  
6 glimmer of hope” that plaintiff can establish a claim against an allegedly fraudulent joinder is  
7 sufficient to support the motion to remand. Plaintiff also cites *Charles v. ADT Security*  
8 *Services*, No. 09-cv-5052, 2009 WL 5184454, at \*2 (C.D. Cal. Dec. 21, 2009) (Judge Philip  
9 Gutierrez), which stated that a non-fanciful possibility of liability, even if weak, is sufficient to  
10 state an intentional infliction of emotional distress claim against a supervisor.

11 The key distinction here is that Maxwell’s instructions to plaintiff concerning his job  
12 duties were classic supervisory decisions. And, Maxwell’s comments about the beard were  
13 purported (even by the complaint itself) as a statement of company values. As in *Janken*,  
14 46 Cal. App. 4th at 64–65, 80, normal supervisory decisions that fall within the scope of  
15 employment, even if later deemed to be discriminatory, cannot rise to the level of harassment.  
16 Because the allegations here are normal supervisory decisions, this action is properly brought  
17 against American. *See id.* at 80.

18 Plaintiff also cites *Padilla v. AT&T Corp.*, 697 F. Supp. 2d 1156, 1159 (C.D. Cal. 2009)  
19 (Judge Andrew Guilford), which stated that remand was proper where the defendant failed to  
20 establish that the plaintiff could not amend the pleadings and ultimately recover (Reply 2).  
21 Plaintiff argues that he can amend his complaint to meet this lower standard, but the only facts  
22 he offers in support of such an amendment are the same facts that he initially alleged (*see id.* at  
23 5). Even construing the alleged facts in a light that favors remand, this order finds that plaintiff  
24 cannot support an intentional infliction of emotional distress claim against Maxwell because the  
25 alleged acts are normal management decisions.

### 26 **3. NO LEGAL BASIS FOR UNFAIR BUSINESS PRACTICES CLAIM.**

27 Plaintiff contends that American and Maxwell committed acts of unfair competition  
28 in violation of the unfair competition law under the California Business and Professions Code

1 Sections 17200–208 (Compl. ¶¶ 42–46). To state a claim for unfair competition under  
2 Section 17200, a plaintiff must allege that a defendant engaged in an “unlawful, unfair or  
3 fraudulent business act or practice.” The statute is violated when a defendant’s conduct violates  
4 any of the foregoing prongs. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1168 (9th Cir.  
5 2012). Under this claim, plaintiff asserts that both Maxwell and American discriminated  
6 against him on the basis of his gender, retaliated against him for complaining about harassment,  
7 and defamed him. He alleges that this conduct injured him by wrongfully denying him earned  
8 wages and equity. He “seeks disgorgement in the amount of the respective unpaid wages and  
9 equity” (Compl. ¶ 44, 46).

10 American cites *Bradstreet v. Wong*, 161 Cal. App. 4th 1440, 1458 (2008), *abrogated on*  
11 *other grounds by Martinez v. Combs*, 49 Cal. 4th 35 (2010), to argue that an “owner or officer  
12 of a corporation may be held personally liable for a corporation’s alleged violation of  
13 California’s Business and Professions Code § 17200 *et seq.* if ‘he or she actively participates in  
14 the unfair business practice’” (Notice ¶ 16). American argues that plaintiff cannot state a claim  
15 under the Section 17200 against Maxwell because “nothing suggests that the same is true of an  
16 employee” (*ibid.*). This order agrees. This Court has found no authority to suggest that  
17 plaintiff’s claim can be brought against a supervisor employee, nor does plaintiff offer any.  
18 Rather, plaintiff generally states that he has provided enough to survive the fraudulent joinder  
19 test (Motion 2, 7). This order finds that American has met its burden to show that plaintiff  
20 cannot state a Section 17200 claim against Maxwell.

21 Such a conclusion is proper under these circumstances because of the nature of a  
22 Section 17200 action. The California Supreme Court has held that restitution is the only  
23 monetary remedy expressly authorized by Section 17200. *Korea Supply Co. v. Lockheed*  
24 *Martin Corp.*, 29 Cal. 4th 1134, 1145–46 (2003). “A UCL action is equitable in nature;  
25 damages cannot be recovered.” *Id.* at 1143 (citation omitted). In his broadly-written complaint,  
26 plaintiff seems to seek reimbursement from Maxwell for lost wages (*see* Compl. ¶ 46). “The  
27 object of restitution is to restore the status quo by returning to the plaintiff funds in which he or  
28 she has an ownership interest.” *Korea Supply Co.*, 29 Cal. 4th at 1149. Even if plaintiff did

1 have an ownership interest in these wages, plaintiff does not allege that Maxwell personally  
2 withheld these wages from him. The only possible Section 17200 remedy that plaintiff could  
3 seek is from his employer, not his supervisor. Since plaintiff cannot state a claim under any of  
4 his theories against Maxwell, this order finds that Maxwell was fraudulently joined. As such,  
5 plaintiff's motion to remand is **DENIED**. Because this order finds that removal was proper  
6 on account of fraudulent joinder, plaintiff's request for attorney's fees is **DENIED AS MOOT**.

### 7 CONCLUSION

8 For the reasons stated above plaintiff's motion to remand is **DENIED**, and his request  
9 for attorney's fees and costs is **DENIED AS MOOT**. Maxwell is hereby dismissed from this civil  
10 action.

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12 **IT IS SO ORDERED.**

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14 Dated: August 6, 2019.

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17 WILLIAM ALSUP  
18 UNITED STATES DISTRICT JUDGE  
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